days when he had been more or less openly accused of molesting her and had, so he said, been shunned and avoided by his neighbours during the Hari Raya celebrations, this action deprived him of his powers of self-control and while so deprived he struck at her with the weapon which happened to be in his hand.

The case was put to the jury, in our view, correctly and adequately. They were directed as to the nature and incidence of the evidence and they were correctly directed as to the law, particularly on the point of provocation.

It is said that the summing-up was defective for a number of reasons which, in our view, are without substance.

It is said that in the first place the Judge created a wrong impression in the minds of the jury by telling them, as he did, that the issue before them was whether the killing was murder or whether it was something less than murder and that a verdict of not guilty of any offence would be unreasonable. In our view not only was that a correct direction but it was a desirable direction which was calculated to concentrate the minds of the jury on the real question in issue because there was never at any time any suggestion from the defence that the appellant was not guilty of any offence whatsoever.

In our view it was wise and proper for the Judge, as is frequently done, to direct the jury to the true nature of the question before them.

Then it was said, and in this connection our attention was invited to the case of *Seneviratne* v. *R.*,[1] that the Judge went too far when he said this to the jury:—

> "I would like to remind you that your verdict should be unanimous or by a majority of 6—1 or 5—2."

As far as that goes that is a statement of the law because anything less than that would not be a verdict. Then he went on:—

> "I would like you to agree on a verdict, for otherwise I will have to order a retrial which could cause expense to all concerned."

That is a bare statement of fact and it is vitally different from what was said to the jury in *Seneviratne's* case where the Judge's observations were the subject of criticisms of the Privy Council.

What the Judge said to the jury in that case, after pointing out what was a verdict and what was not a verdict, was: "That means you have to go through the trial again. I hope you will not have this misfortune." In other words in *Seneviratne's* case he pointed out that a division of opinion among the jury would bring inconvenience and misfortune to themselves. That, of course, was going very far than the Judge went in this case.

Again it was said that the Judge intervened on several occasions to question witnesses when he should not have done so. It is, of course, axiomatic that the less a Judge interferes in the examination of a witness, which after all is the duty of counsel, the better. On the other hand it is equally clear that if at the conclusion of a witness' evidence the Judge has any doubt in his mind as to what has been said or as to the intention of the words used he is perfectly entitled to put such questions to the witness for his own benefit and for the benefit of the jury.

What is wrong is when a Judge takes the examination of a witness entirely out of the hands of counsel and there was nothing of that sort here. There were two or three interventions and in our opinion none of these could have in any way affected the minds of the jury by conveying to them any opinion on the part of the Judge in favour of a verdict of murder as against the verdict of culpable homicide not amounting to murder.

We have listened to a long and exhaustive criticism of the prosecution case directed to make out that the appellant was not guilty of murder. But the question of guilty or not guilty was a question for the jury, it is not a question for us, and we know of no authority that would entitle us to interfere with the verdict of a jury which has been arrived at after a proper and adequate direction by the trial Judge.

In all the circumstances of the case we are bound to say that the appeal is dismissed.

Appeal dismissed.

Solicitors:—*Y. S. Lee & Co.*

HAMSA KUNJU v. REGINA

[A.Cr.J. (Buttrose J.) April 29, 1963]

[Singapore — Magistrate's Appeal No. 207 of 1962]

Evidence—Admission of —No objection raised at trial—Whether can be raised on appeal—Character evidence or res gestae.

The appellant was convicted on three charges of causing hurt and grievous hurt by a dangerous weapon and was sentenced to various sentences which were to run concurrently. The learned District Judge found as a fact that the appellant without provocation and without acting in self-defence committed the offences with which he was charged.

It was argued for the appellant that the learned District Judge had erred in law in admitting certain evidence, particularly with reference to an alleged incident at the Delta Road work-site on the morning of March 21, 1962. The assaults which formed the subject

matter of the charges occurred on the night of March 21. The evidence alleged to be prejudicial to the fair trial of the appellant was that on that very morning an incident occurred between the appellant and one Simpson, a fellow labourer at the work-site in which Samsuddin one of the complainants intervened. It appeared that during the course of this incident the appellant struck Simpson, and Samsuddin, who was on top of a piling frame nearby, called out that it was not right for the appellant to hit such a weak man and that the Union could deal with the matter. According to Simpson's evidence the appellant said to Samsuddin, "if you want to you can come down too," to which the latter replied that he did not go there to fight but to work and that he would report the matter to the Union.

Held: (1) the whole of that evidence was part of the *res gestae* and was material and relevant. Samsuddin's interference in the incident and his threat to report the matter to the Union supplied a motive for the attack on him by the appellant a few hours later. It was on an entirely different footing to evidence tending to show the previous bad character of the appellant or to evidence of similar acts tending to show that the appellant was likely to have committed the offence for which he was tried;

(2) even if the evidence was inadmissible and had been excluded, the learned District Judge could not have arrived at any other conclusion than the one which he did.

Observations on a failure to object to inadmissible evidence in the Court below.

Case referred to:—

(1) *Stirland* v. *Director of Public Prosecutions* [1944] A.C. at p. 328.

MAGISTRATE'S CRIMINAL APPEAL.

L. A. J. Smith for the appellant.

David Marshall (on a fiat) for the respondent.

Buttrose J.: In this case the appellant was convicted on three charges of causing hurt by a dangerous weapon. In one case the hurt caused was grievous and on this charge he was sentenced to 18 months' imprisonment and ordered to pay $200 compensation to the complainant in default 2 months' imprisonment. With regard to the other two charges he was sentenced to 1 year's imprisonment on each charge and ordered to pay $100 to each of the complainants in default 1 month's imprisonment. The sentences in all cases to run concurrently. He now appeals.

There was ample evidence if accepted by the learned District Judge to support the conviction. He found as a fact that the appellant without provocation and without acting in self-defence wounded the three complainants and in doing so caused hurt to two of them and grievous hurt to the third. He accepted the evidence of the prosecution witnesses on this point and rejected the evidence of the defence and was satisfied beyond all reasonable doubt that the appellant was guilty on all three charges.

Notwithstanding this it was argued that the learned District Judge had erred in law in admitting certain evidence. No attempt was made on the hearing of the appeal to deal with the merits or the learned District Judge's findings of fact and although some twelve grounds of appeal were put forward in the Petition only one was persevered with.

It was submitted on behalf of the appellant that evidence which was inadmissible was admitted by the learned District Judge, particularly with reference to the alleged incident at the Delta Road work-site on the morning of the 21st March, 1962 and this prejudiced the fair trial of the appellant.

Now the assaults which formed the subject matter of the three charges against the appellant all occurred at about 9.45 on the night of the 21st March, 1962. The evidence was that on that very same morning an incident occurred between the appellant and one Simpson a fellow labourer at the Delta Road work-site in which Samsuddin one of the complainants intervened. It appeared that during the course of this incident the appellant struck Simpson and Samsuddin, who was on top of a piling frame nearby, called out that it was not right for the appellant to hit such a weak man and the Union could deal with the matter. According to Simpson's evidence the appellant said to Samsuddin, "if you want to you can come down too," to which Samsuddin replied that he did not come there to fight but to work and that he would report the matter to the Union.

The whole of that evidence was, in my view, clearly part of the *res gestae* and was material and relevant. Samsuddin's interference in the incident and his threat to report the matter to the Union supplied a motive for the attack on him by the appellant a few hours later. It is, in my view, on an entirely different footing to evidence tending to show the previous bad character of the appellant or to evidence of similar acts tending to show that the appellant is likely to have committed the offence for which he is being tried.

The only other point argued on the appeal was one of misdirection but there was, in my opinion, no substance in it.

This is sufficient to dispose of the appeal but I think I should add that if I am wrong and the evidence is inadmissible and had been excluded the learned District Judge could not, in my opinion, have arrived at any other conclusion than the one which he did. No objection whatever was taken to the admissibility of this evidence in the Court below and Counsel for the appellant cross-examined extensively on it. The principles to be applied where objection to

the admissibility of evidence is not taken at the trial were enunciated by Viscount Simon L.C. in *Stirland* v. *Director of Public Prosecution*[1] at p.328 and it is unnecessary for me to restate them.

There is one further matter to which I think I should refer and that is the statement in the learned District Judge's grounds of decision that he completely disregarded the unwarranted and groundless attempt by the prosecution to introduce unfavourable evidence of the record of the accused. This must, I think, clearly refer to the accused's brother Jamal Mohamed and not the accused.

That this is so is borne out by a reference to the evidence. In re-examination Mohamed Haneefa one of the complainants was asked the following question by Counsel for the prosecution—

> Q. Do you know Jamal Mohamed has a record for violence?
>
> A. I heard.

Again in answer to a question by the Court the same witness said, "People talk about it for what it is worth—Jamal Mohamed being in jail. I am unable to give details."

Subsequently there appears a note by the learned District Judge "Marshall (prosecuting Counsel) informs Court that he is now instructed that Jamal Mohamed has not been to prison for an offence of violence or for any offence."

It is beyond doubt, so it seems to me, that this is the matter to which the learned District Judge was referring.

For these reasons, in my judgment, the appeal must be dismissed and the convictions and sentences affirmed.

Appeal dismissed.

MUNIANDY v. TAN LIAN HOCK & ORS.

[O.C.J. (Suffian J.) May 11, 1963]

[Alor Star — Kedah Civil Suit No. 18 of 1962]

Road accident—Lorry knocking station wagon which in turn knocked into bullock cart—Injury to driver of bullock cart—Bullock cart driver suing drivers and owners of lorry and station wagon—Whether reasonable —Payment into court by driver and owner of lorry.

Practice and Procedure—Costs—Whether costs of successful party should be borne by unsuccessful party —Test to be applied—Payment direct to successful party —Exercise of discretion by Court.

Practice and Procedure—R.S.C., 1957 O.22 r.4(1) & (3), and O.52 r.1—Whether procedure adopted by plaintiff correct—Whether application can be made by way of motion in open Court—Costs to be not more than costs of summons-in-chambers unless good reason exists —Meaning "of the Court or a Judge" in O.22 r.4(3).

The plaintiff, a bullock cart driver, was injured when a lorry knocked into a station wagon which in turn knocked into the bullock cart. The first and second defendants were the driver and owner respectively of the lorry. The third and fourth defendants were the driver and owner respectively of the station wagon. The plaintiff alleged that both the first and third defendants were negligent. The first and second defendants paid $3,500 into Court under O.22 r.4(1) and the plaintiff elected to accept that sum whereupon all further proceedings were stayed. The plaintiff then filed notice of motion under O.22 r.4(3) praying *inter alia* that any costs awarded to the third and fourth defendants be paid direct by the first and second defendants. It was contended by counsel for the defendants that (i) the plaintiff should not have sued the third and fourth defendants at all and that the first and second defendants should not be made to pay their costs, (ii) the plaintiff should have applied by summons-in-chambers and not by motion, and that if the plaintiff obtained costs of this application it should not be more than the costs of a summons-in-chambers.

Held: (1) it was reasonable for the plaintiff to have joined the four defendants because apart from blaming the plaintiff for the collision the defendants blamed each other;

(2) it was reasonable to order that the costs of the successful third and fourth defendants should be borne by the unsuccessful first and second defendants and that in this case the costs should be paid direct to them. The test as stated by Vaughan Williams L.J. in *Besterman* v. *British Motor Cab Co. Ltd.*[1] applied;

(3) under O.22 r.4(3) the application may be made by way of motion in open court or by summons to a judge in chambers, but where the plaintiff proceeds by way of motion, as in this case, the judge in exercising his discretion as to costs will not ordinarily allow more than the costs of a summons-in-chambers unless there was some good reason for the hearing to be in open court rather than in chambers. As there was no good reason in this case the unsuccessful first and second defendants should pay costs as if the application had been made by summons-in-chambers. *M. Lee* v. *R. C. H. Lim & Co.*[2] followed in the interpretation of the words "of the Court or a Judge" in O.22 r.4(3).

Cases referred to:—

(1) *Besterman* v. *British Motor Cab Co. Ltd.* [1914] 3 K.B. 181 at p. 187.

(2) *M. Lee* v. *R. C. H. Lim & Co.* [1957] M.L.J. 190.

The following cases were also cited in argument: *Sanderson* v. *Blyth Theatre Co.* [1903] 2 K.B. 533; *Bullock* v. *The London General Omnibus Co. & Ors.* [1907] 1 K.B. 264; *Southey-Roberts Estates Ltd.* v. *Roe* [1956] 2 All E.R. 829; *Parks* v. *Knowles & Anor.* [1957] 3 All E.R. 600; *P. Odernamall & Co.* v. *American President Lines Ltd. & Anor.* [1956] M.L.J. 11.

CIVIL SUIT.

Triptipal Singh for the plaintiff.

T. Subbiah for the 1st and 2nd defendants.

Tan Lye Huat for the 3rd and 4th defendants.

Cur Adv. Vult.

Suffian J.: In this case the plaintiff, a bullock cart driver, was injured when the bullock